

BILL ANALYSIS

Senate Research Center
84R670 AJZ-D

S.B. 304
By: Schwertner
Health & Human Services o
2/6/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last year, the Sunset Advisory Commission (Sunset) thoroughly examined our state's long-term care system. The intent was to protect the health and safety of Texas' most vulnerable citizens. Sunset determined that DADS issued few sanctions for violations, including many serious and repeat violations, leaving vulnerable Texans in harm's way. For fiscal year 2013, out of 18,735 violations against nursing homes, DADS took a total of 11 enforcement actions.

Texas ranks ninth in the country for serious violations per nursing home. Although DADS staff identified many nursing home providers committing serious violations, including 92 nursing homes that had repeated violations at the highest levels of severity (problems such as sexual abuse, resident-on-resident aggression, inadequate treatment of sores and infections, and medication errors), Sunset determined that state penalties were insignificant and that a negligible level of state enforcement existed, particularly in licensure suspension and revocation.

In response to these findings, Sunset unanimously adopted a variety of recommendations to strengthen regulatory oversight, including higher administrative penalties, progressive sanctions for serious or repeated violations, and Senator Schwertner's "three strikes" provision. These recommendations will be in the DADS sunset legislation. Senator Schwertner has also filed S.B. 304, a standalone bill, that includes an updated "three strikes" provision.

S.B. 304 requires DADS to revoke the license of a nursing home that commits three immediate threat violations related to the abuse or neglect of a resident (intent is to restrict this to a 24-month period). Immediate threat is the highest level violation: a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

Not more than one "strike" counts for each separate survey, inspection, or investigation. During a multiday survey, if a facility is cited for multiple immediate threat violations, only one counts as a "strike." This ensures we are targeting systematic bad actors.

A "strike" is excluded if, after informal dispute resolution, the violation is removed or reduced in severity.

As proposed, S.B. 304 amends current law relating to the abuse and neglect of residents of certain facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 242.061, Health and Safety Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3), as follows:

- (a) Defines "abuse," "immediate threat to health and safety," and "neglect."

(a-1) Creates this subsection from existing text. Authorizes the Department of Aging and Disability Services (DADS), after providing notice and opportunity for a hearing to the applicant or license holder, to deny, suspend, or revoke a license if DADS finds that the applicant, the license holder, or any other person described by Section 242.032(d) (License or Renewal Application) has committed certain offenses.

(a-2) Requires that DADS revoke, except as provided by Subsection (a-3), a license under Subsection (a-1) if DADS finds that:

(1) the license holder has committed three or more violations described by Subsection (a-1) that constitute an immediate threat to health and safety related to the abuse or neglect of a resident; and

(2) each of at least three of the violations described by Subdivision (1) are reported in connection with separate surveys, inspections, or investigation visits.

(a-3) Prohibits DADS from revoking a license under Subsection (a-2) due to a violation described by Subsection (a-2)(1), if:

(1) the violation is not included on the written list of violations left with the facility at the time of the initial exit conference under Section 242.0445(b) (Reporting of Violations) for a survey, inspection, or investigation; or

(2) the violation has been reviewed under the informal dispute resolution process established by Section 531.058 (Informal Dispute Resolution for Certain Long Term Care Facilities), Government Code, and a determination was made that:

(A) the violation should be removed from the license holder's record; or

(B) the violation is reduced in severity so that the violation no longer constitutes an immediate threat to health and safety related to the abuse or neglect of a resident.

SECTION 2. Amends Section 242.0615(a), Health and Safety Code, as follows:

(a) Authorizes DADS , after providing notice and opportunity for a hearing, to exclude a person from eligibility for a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. Provides that the authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a-1), rather than Section 242.061(a).

SECTION 3. Effective date: September 1, 2015.